37 (10) A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J

Second Appeal No.640/2003

Reshamlal and another

Versus

Gosai Ram and 5 others

JUDGMENT

Post for 17 -07-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

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A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Before: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Second Appeal No. 640 of 2003

APPELLANTS/ PLAINTIFFS	:	1.	Resham Lal alias Badri Prasad, Son of Shri Motilal, aged about 48 years.
		2.	Krishna Lal, Son of Shri Motilal, aged about 65 years.
			(Both are resident of village : Bedi Kona, Tahsil : Dabhra, District : Janjgir – Champa (C.G.)
			Versus
RESPONDENTS/ DEFENDANTS	:	1.	Gosai Ram, Son of Shri Sonsai, aged about 38 years.
	:	2.	Dharam, Son of Shri Sonsai, aged about 32 years.
	:	3.	Bisahu, Son of Shri Sonsai, aged about 28 years (Deleted)
	:	4.	Sukmat, Widow of Sonsai, aged about 55 years
	:	5.	Santram, Son of Jogiram, aged about 42 years (Deleted)
			(All are resident of Village : Sakhroli, Tahsil : Dabhra, District: Janjgir – Champa (C.G.)
	:	6.	State of Chhattisgarh, through : District Collector, Janjgir – Champa, Distt : Janjgir – Champa (C.G.).

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

Present:
Shri A.N.Bhakta, Shri H.S.Patel and Shri A.K.Prasad, counsel for the appellants.
Shri Vimalesh Bajpai, counsel for respondents No. 1 to 5.
Shrui Akhil Agrawal, P.L. for the State/respondent No.6

J U D G M E N T

(Delivered on this 17th day of July, 2007)

In this second appeal by the appellants/plaintiffs, the judgment and decree dated 06.09.2003 passed by the Additional District Judge, Sakti in Civil Appeal No. 24-A of 1998 is under challenge whereby the appeal was dismissed while affirming the judgment and decree dated 29.09.1998 passed in Civil Suit No. 116-A of 95 by Civil Judge Class-II, Sakti, whereby the plaintiffs' suit for declaration of title and possession of the suit land was dismissed.

2. The appellants/plaintiffs had pleaded that they had purchased land Kh.No. 433/1 area 0.28 acres (hereinafter referred to as the 'suit land) situated in village Sakrali, Tahsil Dabhra, from one Sonsai vide registered sale deed 19.01.1967 for a consideration of Rs.300/- and had obtained possession thereof. The name of the appellants/plaintiffs was entered as owners of the suit land in *Sansodhan Panji* No.650 on 14.09.1968. In 1994, the appellants/plaintiffs learnt that after death of Sonsai the respondents/defendants had got their name mutated over the suit land. The application for mutation filed by the plaintiffs was rejected by the Revenue Court on 30.06.95. The respondents/defendants had unauthorisedly cut the crops of the suit land. On these premises, the plaintiffs prayed for declaration of the title, permanent injunction and mesne profits and in the alternative prayed for the relief of possession if it was held that they were not in possession of the suit land on the date of the suit.

3. The respondents/defendants denied the pleadings in *toto* while pleading that Sonsai had never executed a sale deed in favour of the

appellants/plaintiffs and had never delivered possession thereof. During his lifetime, Sonsai and thereafter the respondents/defendants were in uninterrupted possession of the suit land. Thus, from 19.01.1967 till the date of suit i.e. 17.08.1995, the appellants/plaintiffs were not in possession of the suit land, and therefore, not entitled to any relief.

4. The learned trial Judge recorded a finding that the original sale deed Ex.P.3 produced by the plaintiffs was torn and did not show the Khasra Number or area of the suit land, which was purchased by the plaintiffs from Sonsai and was therefore not proved. It was also held that Sonsai was continuously in possession of the suit land and after his death the defendants were in continuous possession thereof as recorded in the revenue records. Thus, since the plaintiffs had failed to prove title over the suit land, they were not entitled to any relief. Consequently, the suit was dismissed.

5. The appellant/plaintiffs preferred first appeal being No.24-A of 98 and moved an application under Order 41 Rule 27 C.P.C. for filing certified copy of the sale deed 19.01.1967 executed by Sonsai in favour of the plaintiffs and also the certified copy of the *Sansodhan Panji* wherein the name of appellants/plaintiffs had been mutated. This application was allowed since not opposed. The appellate Court, on the basis of the evidence adduced by the plaintiffs and the certified copy of the sale deed 19.01.1967, held that it was proved that the appellants/plaintiffs had purchased the suit land from Sonsai on 19.01.1967 vide sale deed Ex.P.3. It, however, recorded a finding that there was overwhelming evidence oral

as well as documentary to show that at no point of time Sonsai had parted with possession of the suit land and after his death, the respondents/defendants also continued in uninterrupted possession of the same. It was held that although the plaintiffs acquired the title over the suit land by virtue of sale deed dated 19.01.1967, the same was extinguished due to complete inaction of the plaintiffs from 19.01.1967 till 17.08.1995 i.e. the date of filing of the suit. On these premises, the appellate Court dismissed the appeal.

6. Shri A.N.Bhakta, learned counsel for the appellants/plaintiffs argued that the lower appellate Court was justified in reversing the finding of the trial Court regarding acquisition of title over the suit land by the appellants/defendants through sale deed Ex.P.3 dated 19.01.1967 and the oral evidence of Mithu P.W.2 also proved that the appellants/plaintiffs were in possession of the suit land from the date of sale by Sonsai. On the other hand, Shri Vimalesh Bajpai, learned counsel for the respondents argued that there is overwhelming evidence on record to show that Sonsai did not part with the possession of the suit land at any point of time. During his life time, Sonsai and thereafter the respondents/defendants were continuously in possession of the suit land which was also recorded in the Khasra Panchshala, therefore, since the owner Sonsai and thereafter his legal heirs i.e. the respondents/defendants were in continuous possession of the suit land for over 12 years and their *continuous possession was also recorded in revenue records, the title, if* any, acquired by the appellants/defendants by virtue of sale deed dated 19.01.1967 had been extinguished due to inaction of the

appellants/plaintiffs for over 18 years i.e. from 19.01.1967 till the date of the suit i.e. 17.08.1995.

7. The following substantial questions of law arises for determination in this appeal:

> "A. Whether the lower appellate Court was justified in reversing the finding recorded by the trial Court that the sale of suit land by Sonsai in favour of the plaintiffs was not proved?
>
> B. Whether the finding recorded by the lower appellate Court that the suit, having not been instituted within 12 years from 19.01.1967 i.e. the date of purchasing suit land from Son Sai was not maintainable, is correct?"

8. Having considered the rival submissions, I have perused the record. The application filed by appellants/plaintiffs under Order 41 Rule 27 C.P.C. for filing a certified copy of the sale deed dated 19.01.1967 executed by Sonsai in favour of the appellants/plaintiffs, was not opposed by the respondents/defendants. The unrebutted testimony of Khemlal P.W.3 proved the execution of sale deed of the suit land by Sonsai in favour of the plaintiffs on 19.01.1967 vide registered sale deed Ex.P.3. Since the details of the lands sold were not legible as the original document was torn, the same has been adequately proved by filing the certified copy of the sale deed dated 19.01.1967 showing execution of sale of suit land by Sonsai in favour of the appellants/plaintiffs. Therefore, the lower appellate Court was wholly justified in reversing the finding recorded by the trial Court and holding that the appellants/plaintiffs had acquired title over the suit land on 19.01.1967 through sale deed Ex.P.3

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executed by Sonsai. The first question is, therefore, answered in affirmative in favour of the appellants/plaintiffs.

9. The only point that now requires consideration in this appeal is whether the title of the plaintiffs had got extinguished due to inaction of the appellants/plaintiffs from 1967 till 1995. It is not disputed that possession of Sonsai and after his death possession of the respondents/defendants was recorded over the suit land till 1994. Thus, Sonsai and after his death his legal representatives i.e. the respondents/defendants were in continuous uninterrupted possession of the suit land till the date of filing of the suit i.e. for over 18 years. The lower appellate Court has, upon proper appreciation of evidence, oral as also documentary, recorded a finding that since 1967 till 1994 Sonsai and his legal representatives (respondents/defendants) were in uninterrupted possession over the suit land and at no point of time, the appellants/plaintiffs were put in possession thereof. Here a reference to Article 65 of the Limitation Act, 1963 becomes relevant. It reads as under:

"65.	For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff".

A plain reading of Article 65 of the Limitation Act goes to show that a suit for possession of immoveable property or any interest therein based on title has to be instituted within 12 years from the date on which the possession of the defendants becomes adverse to the plaintiffs. In the present case, on 19.01.1967 Sonsai had transferred a valid title to the appellants/plaintiffs through a sale deed Ex.P.3. However, possession of

the suit land was never delivered to the plaintiffs and Sonsai and thereafter his legal representatives continued to be in uninterrupted possession for over 12 years, which was also recorded in the revenue records. It is thus not a case where possession of Sonsai and thereafter his legal representatives was permissive in nature so as to come to the aid of the plaintiffs on the reasoning that possession howsoever long being permissive can never become adverse to the owner. Since in this case Sonsai retained possession of the suit land on the date of execution of the sale deed i.e. 19.01.1967, his possession was adverse to the vendee i.e. the appellants/plaintiffs. The fact that possession of Sonsai and after his death, possession of his legal representatives i.e. the respondents/defendants was continuously recorded in revenue records till 1994 also strengthens the inference that possession of Sonsai and after his death possession of his legal representatives over the suit land was adverse to the vendee i.e. the appellants/plaintiffs. It is also to be remembered that this is not a case where Sonsai or his legal representatives were trespassers over the suit land. Ownership of the Sonsai over the suit land prior to 19.01.1967 is admitted. Since the appellants/plaintiffs remained inactive for a period of over 18 years and instituted the suit only in the year 1995, the respondents/defendants denied the sale by Sonsai in favour of the appellants/plaintiffs and resisted the suit on the ground that Sonsai had never parted with possession of the suit land and after his death they continued in possession thereof. In such a situation, the question of plea of adverse possession being taken by the respondents/defendants would not arise and in the facts and circumstances of this case, for the purpose of computing the period of

limitation under Article 65 of the Limitation Act, it would only required to be seen when did the possession of Sonsai and thereafter the respondents/defendants became adverse to the appellants/plaintiffs. Therefore, the absence of plea of adverse possession by the defendants, in such a situation, would not come to the aid of the appellants/plaintiffs whose right to the suit land was extinguished under Article 27 of the Limitation Act due to their complete inaction for a period of 12 years from 19.01.1967.

10. Section 27 of the Limitation Act reads as under:

> **27. Extinguishment of right to property.---** At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

Section 27 of the Limitation Act postulates that after the determination of the period prescribed for instituting a suit for right to any property the party which should have instituted such suit but has failed to do so within the period prescribed by the law of Limitation, ceases to have any right over the property and after the expiry of the period prescribed under the Limitation Act, the law declares that not only the remedy is barred but the title is also extinguished.

11. The practical effect of the inaction of the appellants/plaintiffs is extinguishment of their title over the suit land. In this view of the matter, I fully concur with the view taken by the lower appellate court and affirm the finding that the title acquired by the appellants/plaintiffs over the suit land through sale deed dated 19.01.1967 executed by Sonsai had got extinguished due to complete inaction on the part of the

appellants/plaintiffs in acquiring possession over the suit land for more than 12 years, during which period Sonsai and after his death the respondents/defendants were in continuous uninterrupted possession. Thus, the substantial question of law is answered in the affirmative against the appellants/plaintiffs. The appeal being devoid of merit is liable to be dismissed.

12. In the result, the appeal is dismissed. In the circumstances of the case, there shall be no order as costs. A decree be drawn accordingly.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani